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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/640,346	08/12/2003	Jian Chung Wang		7721

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EXAMINER	
PIERRE LOUIS, ANDRE	
ART UNIT	**PAPER NUMBER**
2123	

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/640,346	WANG, JIAN CHUNG	
	Examiner	Art Unit	
	Andre Pierre-Louis	2123	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-21 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 12 August 2003 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 8/12/05
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-21 have been presented for examination.

Claim Objections

2. Claims 14-17, 19-20 are objected to because of the following informalities:

2.1 Claim 14 lines 2-3 refers to "the first traffic generating parameters", however, previously, the claim merely refers to "a first traffic generating command". Appropriate correction is required.

2.2 Claim 15 lines 3-4 refers to " the second traffic generating parameters", however, previously no reference has been made to "a second traffic generating parameter". Appropriate correction is required.

2.3 Claim 16 lines 2 and 4-5 refers to " the second traffic generating parameters", however, previously no reference has been made to "a second traffic generating parameter". Appropriate correction is required.

2.4 Claim 17 lines 1-2 refers to " the second traffic generating parameters", however, previously no reference has been made to "a second traffic generating parameter". Appropriate correction is required.

2.5 Claim 19 line 1 refers to "further includes a step", however there is no previous includes steps mentioned in the claim"; also lines 4-7 show a setting step of "second traffic generating parameters", however, previously there is no reference step to setting a first traffic generating parameters. However, applicant's claim shows the setting of a simulation test parameters and setting of a network testing apparatus "a, and b1 of the previous claim". Appropriate correction is required.

2.4 Claim 20 line 1 refers to "step b) further comprises", however there is no "comprises steps" in the claim; also line 4 shows refers to "the *designed* network simulating model", however the claim merely shows a network simulating model. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3.0 Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Piesco (USPG_PUB No. 2003/0212908), in view of Nakamoto et al. (USPG_PUB No. 2004/0088605).

3.1 In considering the independent claims 1 and 9, Piesco substantially teaches a network testing apparatus for performing network simulation tests and traffic tests in alternative modes, the network testing apparatus comprising: a software module (fig.1-3), comprising: a network simulating database for storing a plurality of network simulating models *(fig.1-4, item #11, pg.1-3 (0015-0030);* a network protocol database for storing a plurality of network protocols *(fig.1-4, item #11, pg.1-3 (0015-0030);* a simulation processing module *(fig.1-4, item #15, pg.1-3 (0015-0030)*; and a traffic generation controlling module *(fig.1-4, item #13, pg.1-3 (0015-0030)*; a hardware module (fig.1-3), comprising: a traffic generating apparatus *(fig.1-4, item #13, pg.1-3 (0015-0030)*; and a media access control *(fig.1-4, pg.1-3 (0015-0030)*; and a plurality of

communication ports *(fig.1-4, item #v1-v10, pg.1-3 (0015-0030).* Piesco further teaches the workstation, the model-designing module *(see fig.1-4).* Although Piesco does not clearly disclose the MAC, one ordinary skilled would know that the media access control would need to be present for communication purposes in the network. However, Nakamoto et al. teaches a method and system for testing networks comprises the processing unit *item 160*, the plurality of communication ports *item 115*, *and a computer component to transmits packets through the appropriate ports (115) (see fig.1-6, pg.2-3 (0020-0025).* Piesco and Nakamoto are analogous art because they are from the same field of endeavors and that the network testing method and system teaches by Piesco is similar to that of Nakamoto et al. Therefore, it would have been obvious at the time of the applicant's invention to combine the system of Piesco with Nakamoto et al. for the purpose of transmitting traffic to its corresponding ports. Nakamoto further teaches the improvement of performance and data processing capability (pg.1 (0009).

3.2 As per claim 2, the combined teaching of Piesco and Nakamoto et al. substantially teach the network testing apparatus is operated in either of two modes: a network simulating test mode or a traffic generator operating mode (*see Piesco fig.1-4, pg.1-3 (0015-0030*); *also Nakamoto et al. fig.1-6 & their description).*

3.3 With regards to claim 3, the combined teaching of Piesco and Nakamoto et al. substantially teach when the network testing apparatus is in the network simulating test mode, the simulation processing module is used for selecting a network simulating model and a network protocol, and for generating a first traffic generating

command to control traffic generation of the traffic generating apparatus *(see Nakamoto et al. fig.1-6, pg.2-4 (0020-0043); also Piesco fig.1-4 & their description).*

3.4 Regarding claim 4, the combined teaching of Piesco and Nakamoto et al. substantially teach the traffic generating apparatus is used for generating traffic according to the first traffic generating command (*see Piesco fig.1-4, pg.1-3 (0015-0030*); *also Nakamoto et al. fig.1-6 & their description).*

3.5 As per claims 5 and 8, the combined teaching of Piesco and Nakamoto et al. substantially teach the media access control is used for transmitting the generated traffic to a corresponding communication port (*see Piesco fig.1-4, pg.1-3 (0015-0030*); *also Nakamoto et al. fig.1-6 & their description, also pg.2 (0020-0022)).*

3.6 with regards to claim 6, the combined teaching of Piesco and Nakamoto et al. substantially teach when the network testing apparatus is in the traffic generator operating mode, the traffic generation controlling module is used for generating a second traffic generating command to control traffic generation of the traffic generating apparatus (*see Piesco fig.1-4, pg.1-3 (0015-0030*); *also Nakamoto et al. fig.1-6 & their description).*

3.7 As per claim 7, the combined teaching of Piesco and Nakamoto et al. substantially teach the traffic generating apparatus is used for generating traffic according to the second traffic generating command (*see Piesco fig.1-4, pg.1-3 (0015-0030*); *also Nakamoto et al. fig.1-6 & their description).*

3.8 Regarding claim 10, the combined teaching of Piesco and Nakamoto et al. substantially teach the at least one administrative workstation is connected to the

network testing apparatus through a network (*see Piesco fig.1-4, pg.1-3 (0015-0030)*; *also Nakamoto et al. fig.1-6 & their description)*.

3.9 With regards to claim 11, the combined teaching of Piesco and Nakamoto et al. substantially teach the at least one administrative workstation is connected to the network testing apparatus directly (*see Piesco fig.1-4, pg.1-3 (0015-0030)*; *also Nakamoto et al. fig.1-6 & their description)*.

3.10 As per claim 12, the combined teaching of Piesco and Nakamoto et al. substantially teach when the network testing apparatus is in the network simulating test mode, the simulation test controlling module is for selecting simulation test parameters, and for transmitting the simulation test parameters to the network testing apparatus (*see Piesco fig.1-4, pg.1-3 (0015-0030)*; *also Nakamoto et al. fig.1-6 & their description; also pg.2-4 (0020-0043))*.

3.11 Regarding claim 13, the combined teaching of Piesco and Nakamoto et al. substantially teach the simulation processing module is for receiving the simulation test parameters, for selecting a network simulating model and a network protocol according to the simulation test parameters, and for generating a first traffic generating command to control traffic generation of the traffic generating apparatus for performing network simulation tests *(see Nakamoto et al. fig.1-6, pg.2-4 (0020-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030))*.

3.12 As per claim 14, the combined teaching of Piesco and Nakamoto et al. substantially teach the simulation test parameters comprises the network simulating model, the network protocol, and the first traffic generating parameters ((*see Nakamoto*

et al. fig.1-6, pg.2-4 (0020-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030)).

3.13 Regarding claim 15, the combined teaching of Piesco and Nakamoto et al. substantially teach when the network testing apparatus is in the traffic generator operating mode, the traffic generating parameter designing module is for inputting the second traffic generating parameters, and for transmitting the second traffic generating parameters to the network testing apparatus (*(see Nakamoto et al. fig.1-6, pg.2-4 (0020-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030)).*

3.14 With regards to claim 16, the combined teaching of Piesco and Nakamoto et al. substantially teach the traffic generation controlling module is for receiving the second traffic generating parameters, and for generating a second traffic generating command to control traffic generation of the traffic generating apparatus for performing traffic tests according to the second traffic generating parameters (*(see Nakamoto et al. fig.1-6, pg.2-4 (0020-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030)).*

3.15 As per claim 17, the combined teaching of Piesco and Nakamoto et al. substantially teach the second traffic generating parameters comprise traffic rate, packet content and packet length *(see Nakamoto et al. fig.1-6, pg.2-4 (0001-0009, 0020-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030)).*

3.16 With regards to claim 18, the combined teaching of Piesco and Nakamoto et al. substantially teach a network testing method for performing either network simulation tests or traffic tests by using a network testing apparatus, the network testing

method comprising the steps of: a) setting the network testing apparatus in a network simulating test mode or a traffic generator operating mode *(see Nakamoto et al. fig.1-6, pg.2-4 (0017-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030))* ; b) when the network testing apparatus is set in the network simulating test mode: b1) setting simulation test parameters, and transmitting the simulation test parameters to the network testing apparatus *(see Nakamoto et al. fig.1-6, pg.2-4 (0017-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030))*; and b2) receiving the simulation test parameters, selecting a network simulating model and a network protocol according to the simulation test parameters, and controlling traffic generation to perform network simulation tests *(see Nakamoto et al. fig.1-6, pg.2-4 (0017-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030))*.

3.17 As per claim 19, the combined teaching of Piesco and Nakamoto et al. substantially teach further includes a step of: c) when the network testing apparatus is set in the traffic generator operating mode: c1) setting second traffic generating parameters *(see Nakamoto et al. fig.1-6, pg.2-4 (0017-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030))*; and c2) receiving the second traffic generating parameters, and controlling traffic generation to perform traffic tests according to the second traffic generating parameters *(see Nakamoto et al. fig.1-6, pg.2-4 (0017-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030))*.

3.18 Regarding claim 20, the combined teaching of Piesco and Nakamoto et al. substantially teach step b) further comprises the steps of: designing the network simulating model (*see Piesco fig.1-4, pg.1-3 (0015-0030)*; *also Nakamoto et al. fig.1-6 &*

their description); transmitting the designed network simulating model to the network testing apparatus; and storing the network simulating model in a network simulating database *(see Nakamoto et al. fig.1-6, pg.2-4 (0017-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030))*.

3.19 With regards to claim 21, the combined teaching of Piesco and Nakamoto et al. substantially teach the network testing apparatus is communicatively located between a tested equipment and a network which said tested equipment is connected to *(see Nakamoto et al. fig.1-6, pg.2-4 (0017-0043); also Piesco fig.1-4 & their description; also pg.1-3 (0015-0030))*.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

4.1 Van Tetering et al. (U.S. Patent No. 5.343.463) teaches a performance measurement system for a telecommunication path and device used therein.

4.2 Chirashnya et al. (U.S. Patent No. 6,560,720) teaches an error injection apparatus and method in a computer network system.

4.3 D'Amico et al. (U.S. Patent No. 6,889,339) teaches an automated DSL network testing software tool.

4.4 Schwaller et al. (U.S. Patent No. 6,625,648) teaches a method, system, and computer program for testing network performance.

5. Claim 1-21 are rejected and this action is non-final. Any inquiry concerning this communication or earlier communications from the examiner should be directed to

Andre Pierre-Louis whose telephone number is 571-272-8636. The examiner can normally be reached on Mon-Fri, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul L. Rodriguez can be reached on 571-272-3753. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 20, 2006

APL

Paul L. Rodriguez 5/1/06
Primary Examiner
Art Unit ~~2125~~ 2123